

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JACKSON HENRY, :
 : CIVIL ACTION NO. 3:10-CV-372
 Petitioner, :
 : (JUDGE CONABOY)
 v. : (Magistrate Judge Carlson)
 :
 MARY SABOL, et al., :
 :
 Respondents. :
 :

**FILED
SCRANTON**

APR 26 2010

PER CT
DEPUTY CLERK

ORDER

AND NOW, THIS 23rd DAY OF APRIL 2010, IT

APPEARING TO THE COURT THAT:

1. Petitioner, a Haitian national in the custody of the United States Bureau of Immigration and Customs Enforcement ("ICE") and currently housed at the York County Prison, York, Pennsylvania, filed this habeas corpus action on February 19, 2010 (Doc. 1);¹

2. The matter was assigned to United States Magistrate Judge Martin C. Carlson, who issued a Report and Recommendation (Doc. 14) on November April 1, 2010, recommending the instant petition be denied without prejudice and that the United States be directed to file a report regarding Petitioner's status on or before August 2, 2010 (*id.* at 21);

3. No objections were filed to the Magistrate Judge's Report and Recommendation and the time for such filing has passed.

¹ Petitioner styled this action as an emergency motion for a preliminary injunction seeking immediate release from custody. (See Doc. 1; Doc. 14.)

IT FURTHER APPEARING TO THE COURT THAT:


1. When a magistrate judge makes a finding or ruling on a motion or issue, his determination should become that of the court unless objections are filed. See *Thomas v. Arn*, 474 U.S. 150-53 (1985). Moreover, when no objections are filed, the district court is required only to review the record for "clear error" prior to accepting a magistrate judge's recommendation. See *Cruz v. Chater*, 990 F. Supp. 375-78 (M.D. Pa. 1998); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998).

2. We find no clear error in the Magistrate Judge's conclusion that this Petition for Writ of Habeas Corpus should be denied without prejudice for the following reasons: 1) Secretary of the Department of Homeland Security Janet Napolitano's January 21, 2010, establishment of a grace period for removal of Haitians living in the United States does not apply to criminal aliens like Petitioner (Doc. 14 at 6); 2) Petitioner's pre-removal detention did not violate due process (*id.* at 8-16); and 3) Petitioner's post-removal order detention does not yet raise constitutional concerns (*id.* at 16-20).

3. We find no clear error in the Magistrate Judge's conclusion that the United States should be directed to report to the Court on or before August 2, 2010, six months from the date on which Petitioner's removal order first became administratively final, regarding the progress of removal proceedings. (Doc. 14 at 20.)

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Magistrate Judge's Report and Recommendation, (Doc. 14), is **ADOPTED**;
2. The Petition for Writ of Habeas Corpus, (Doc. 1), is **DENIED without prejudice**;
3. The United States is directed to report to the Court on or before August 2, 2010, regarding the progress of removal proceedings;
4. There is no basis for the issuance of a certificate of appealability in the Court of Appeals for the Third Circuit;
5. The Clerk of Court is directed to close this case.


RICHARD P. CONABOY
United States District Judge